* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th SEPTEMBER, 2022

IN THE MATTER OF:

\+ **LPA 351/2021 & CM APPLs. 33918/2021, 33920/2021**

MANOJ KUMAR AGRAWAL ..... Appellant

Through: Mr. Sunil J Mathews, Advocate

versus

DELHI DEVELOPMENT AUTHORITY THROUGH ITS CHAIRMAN ..... Respondent

Through: Ms. Prabhsahay Kaur, Standing Counsel for DDA

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

## JUDGMENT

**SUBRAMONIUM PRASAD, J**

1. By way of the instant LPA, the Appellant seeks to challenge the Order dated 13.08.2021, passed by learned Single Judge in W.P.(C) 8395/2021. The learned Single Judge by the order impugned herein has dismissed the Writ Petition.

2. The facts of the case reveal that DDA invited applications under the DDA Housing Scheme, 2021, for allotment of flats at various places in Delhi, including Jasola, *vide* advertisement dated 02.01.2021. The Appellant herein was an applicant in the said Housing Scheme.

3. The applications for the Scheme closed on 16.02.2021. Draw of lots was held on 10.03.2021. 22,750 persons applied for 1350 flats. The

Appellant was successful in the draw of lots and was allotted Flat No.3093, Ninth Floor, Block 3, Pocket 9B, Jasola, New Delhi-110025.

4. A demand cum allotment letter was issued to the Appellant on 30.03.2021. Under the said letter, the Appellant was to pay a sum of Rs.1,94,34,618/- on or before 29.06.2021.

5. The Appellant filed a writ petition bearing W.P.(C) 8395/2021 on 13.08.2021 challenging the demand-cum-allotment letter dated 30.03.2021, questioning the demand of Rs. 1,94,34,618/-. It was stated by the Appellant that the cost demanded for the flat was much higher than what it ought to be. The demand cum allotment letter was also challenged on the ground that the DDA is not in a position to handover the possession of the flats within three months from the date of demand-cum-allotment letter after all clearances as stated in the advertisement. The Appellant had relied on a letter dated 23.04.2021 which has been issued by RERA to the DDA seeking certain clarifications to demonstrate that the DDA will not be in a position to handover physical possession of the flats within three months of the payment.

6. The learned Single Judge by the Order impugned herein dismissed the writ petition stating that if the Petitioners therein had any reservations about the Scheme, they could raise their grievance before the DDA. The learned Single Judge held that after participating in the draw of lots without any protest, the Petitioners were estopped from raising any objections. This Order, passed by the learned Single Judge has been sought to be challenged in the present appeal.

7. Mr. Sunil J Mathews, learned Counsel for the Appellant, has taken this Court through the Scheme and, more particularly, to Annexure –A of the Scheme, which states that the possession of the flats will be handed-over

within three months of issuance of demand-cum-allotment letter. He has also taken this Court through Clause 9 of the Scheme to contend that the flats at Jasola have been kept at a higher rate.

8. *Per contra*, Ms. Prabhsahay Kaur, learned Standing Counsel for the DDA, contends that in Annexure-A of the Scheme, it had been stated that the cost of HIG flats at Jasola, Pocket 9B, which has been allotted to the Appellant, would cost Rs. 1.97-2.14 crore and the demand-cum-allotment letter of Rs. 1,94,34,618/- is actually lesser than the tentative cost. She further contends that the DDA had initiated the process of registration with RERA on 26.06.2020 which is even prior to the date of the advertisement of the Scheme, i.e. 02.01.2021. She further submits that the DDA has made its submission of Project Registration Application on 11.02.2021 and had submitted the registration fee on 26.03.2021. She, therefore, states that there was no misrepresentation by the DDA, when it has been stated that the registration of the current Housing Project is under process with RERA.

9. Heard Mr. Sunil J Mathews, learned Counsel for the Appellant, and Ms. Prabhsahay Kaur, learned Standing Counsel for DDA, and perused the material on record.

10. A perusal of the DDA Housing Scheme, 2021 and, more particularly, Annexure-A of the Scheme reveals that the tentative cost of a flat at Jasola, Pocket 9B, is Rs.1.97-2.14 crore. If the Appellant thought that the price of the flat was higher, he need not have participated in the draw of flats. The Appellant participated in the draw of lots without demur. After having participated in the Scheme, the Appellant cannot then question the price of the flat.

11. Further, it is well settled that it is not for the writ courts to exercise its jurisdiction under Article 226 of the Constitution of India to enter into the

questions of fixation of price regarding allotment of flats fixed by authorities.

12. The Apex Court in Bareilly Development Authority & Anr. v. Ajai Pal Singh & Ors., **(1989) 2 SCC 116**, while dealing with the case wherein the cost of houses/flats has been challenged, has observed as under:-

> *"21... Even conceding that the BDA has the trappings of a State or would be comprehended in "other authority" for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly instalments to be paid, the "authority" or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. In this sphere, they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e. BDA in this case) in the said contractual field.*
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> ***22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple — Radhakrishna Agarwal v. State of Bihar [(1977) 3 SCC 457 : (1977) 3 SCR 249] , Premji Bhai Parmar v. Delhi Development Authority [(1980) 2 SCC 129 : (1980) 2 SCR 704] and DFO v. Biswanath Tea Company Ltd. [(1981) 3 SCC 238 : (1981) 3 SCR 662]***
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> *23. In view of the authoritative judicial pronouncements of this Court in the series of cases*

> *dealing with the scope of interference of a High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India in cases of non-statutory concluded contracts like the one in hand, we are constrained to hold that the High Court in the present case has gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the appellants herein in increasing the cost of the houses/flats and the rate of monthly instalments and giving directions in the writ petitions as prayed for."*
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> (emphasis supplied)

13. Clause 10 of the DDA Housing Scheme makes as well as the demand-cum-allotment dated 30.03.2021makes it clear that the cost of the flat should be deposited within 90 days from the issue of the demand-cum-allotment letter.

14. Clause 10 of the Scheme further states that a further period of three months over and above the initial period of 90 days is available to the allottees, subject to payment of interest at the rate of 10 per cent, and if the amount is not deposited, then the application money will be forfeited and the flat will be made available for allotment to others. The Appellant had to deposit the money on or before 26.09.2021 and he could make further deposit by 27.09.2021 with interest at the rate of 10 per cent. The money has not been paid and, therefore, as per Clause 10 of the Scheme, the flat could be made available for allotment to others.

15. Further, the contention of learned Counsel for the Appellant that there was misrepresentation by the DDA and that the money could not have been demanded because the DDA was not in a position to handover the possession of the flats after all clearances, also cannot be accepted. A perusal of the letter dated 23.04.2021 which the Appellant states has been

received by him under the RTI Act, 2015, shows that the questions raised by RERA are only clarificatory in nature. Further, it is informed by Ms. Prabhsahay Kaur, learned Standing Counsel for the DDA, that RERA has already granted registration to DDA on 31.08.2022.

16. The facts of the case make it abundantly clear that the instant case is one of an unwilling purchaser who is looking for excuses not to pay the money. The application made by the DDA had not been rejected on the date when the demand cum allotment letter was issued by the DDA.

17. In view of the above, the LPA is dismissed. Pending applications, if any, stand disposed of.

**SATISH CHANDRA SHARMA, CJ**

**SUBRAMONIUM PRASAD, J**

**SEPTEMBER28, 2022**
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